

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

NEXON KOREA CORPORATION,
a Korean Corporation,

Plaintiff,

v.

IRONMACE CO., LTD., a Korean
Corporation; JU-HYUN CHOI, individually;
and TERENCE SEUNGHA PARK,
individually,

Defendants.

Case No. 2:23-cv-00576-TL

**SUPPLEMENTAL DECLARATION OF
EUNG JUN JEON**

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I, Eung Jun Jeon, hereby declare as follows:

INTRODUCTION

1. I am an attorney duly licensed to practice law in the Republic of Korea (“Korea”) and a partner with the law firm of LIN. I submitted a declaration in support of the Motion to Dismiss for Forum Non Conveniens filed by Ironmace, Choi, and Park (collectively, “Defendants”) in the above-captioned lawsuit (the “U.S. Litigation”). I am now submitting this supplemental declaration to address certain arguments raised by Nexon Korea Corporation (“Nexon”) in its opposition to that motion. The facts stated herein are known to me personally, and if called as a witness, I could and would testify competently thereto.

THE LOCATION OF THE LAWSUITS FILED BY THE PARTIES IN KOREA

2. On March 31, 2023, Ironmace filed a lawsuit against Nexon in the Suwon District Court for prohibition of business interference and confirmation of copyright non-infringement (Suwon District Court 2023GaHap13599). Under the provisions of the Korean Civil Procedure Act (hereinafter “KCPA”), Ironmace was permitted to file the above claims with the Suwon District Court or its subordinate court, Seongnam Branch of the Suwon District Court (Article 24(1) of the KCPA) because the Seongnam Branch is the local court where Nexon’s headquarters are located, and the Suwon District Court is a court specially recognized as having jurisdiction under the KCPA.

3. On April 10, 2023, Ironmace applied for a preliminary injunction in that same Court.

4. On April 14, 2023, Nexon filed an application for a preliminary against Ironmace, Choi, and Park to prohibit infringement of trade secrets and copyrights in the Suwon District Court (Suwon District Court 2023GaHap10129).

5. In the above-described litigation in the Suwon District Court, Defendants have not taken any position regarding whether the Seoul District Court is a proper venue for litigation of

1 Nexon's claims for copyright infringement and trade secret misappropriation against Defendants.
2 Nexon has not attempted to file any claims in the Seoul Central District Court, and Defendants
3 would not object to the jurisdiction of the Seoul Central District Court if Nexon did so.

4 6. On August 20, 2021, one (1) year after Choi's dismissal from Nexon, Nexon did
5 file a lawsuit against Choi in the Seoul Central District Court (Seoul Central District Court 2021
6 GaHap560970), claiming that he infringed on Nexon's trade secrets. It can be understood that
7 Nexon filed the lawsuit based on the provisions of the "Acknowledgment about Company IP"
8 and "Annual Salary Agreement" signed while Choi was still employed by Nexon, by
9 determining that the Seoul Central District Court has exclusive jurisdiction over the case. Nexon
10 also entered into "Acknowledgment about Company IP" with Park, which provides for the
11 exclusive jurisdiction of the Seoul Central District Court (Clause 2, Article 5 of the
12 Acknowledgment).

13 **DEFENDANTS HAVE PRODUCED DOCUMENTS EVIDENCING THE CREATION OF**

14 **DARK AND DARKER**

15 7. Ironmace did not conceal any evidence regarding Dark and Darker and its
16 creation in the Korean proceedings. Nexon's allegations to this effect in its Opposition are
17 untrue. If Ironmace were to conceal such evidence in reliance on the KCPA, the Korean court
18 would consider these circumstances when making factual determinations and render a judgment
19 against Ironmace in any way.

20 8. The Korean Civil Procedure Act requires the applicant to make a request for
21 evidence to the court. If the court finds that the request is valid, it will issue a decision ordering
22 the production of such requested evidence. However, Nexon has not filed any requests for
23 evidence with the court in the pending injunction proceedings in Korean court. Under the KCPA,
24 a party may request the production of evidence from another party by motion to the court. Nexon
25 has not requested documents through this procedure. On the last day of the preliminary
26 injunction trial, Nexon instead requested that the court close the preliminary injunction trial,

1 arguing that the evidence submitted by Nexon alone proved Nexon's claims. In other words,
2 Nexon took the position that it was not necessary to make an evidentiary request to decide the
3 Korean preliminary injunction case.

4 9. Nexon argues that the Suwon District Court did not hear any testimony and did
5 not allow it to cross-examine witnesses. However, a party's motion is required for the court to
6 hear testimony and cross-examine witnesses, and Nexon did not make such a motion to the court.

7 10. Nexon also argues that the source code could not have been reviewed by the
8 Suwon District Court because Ironmace did not submit the source code to that court. Regarding
9 such a claim, the following circumstances should be considered. First, the dispute in this case is
10 not a case that involves the copyright of a computer program. Nexon is only claiming copyright
11 infringement of the overall nature of the "game" itself, not the source code of the game program.
12 If Nexon had claimed copyright infringement of computer program source code, Ironmace would
13 have submitted the source code and requested an expert examination to compare Nexon's source
14 code with Ironmace's source code. However, Nexon was not willing to produce its own source
15 code and did not allege any copyright infringement of source code in its motion for a preliminary
16 injunction. Second, Nexon did not submit its source code to the court for comparison. There is
17 no point in Ironmace submitting its source code to the court if Nexon is not submitting its own
18 source code (for P3 Game) to the court.

19 11. Ironmace will submit additional documents regarding the development of Dark
20 and Darker to the Suwon District Court. The Suwon District Court ordered the parties to submit
21 the necessary evidence by July 19, 2023, and Ironmace is preparing the necessary evidence
22 accordingly. In light of these circumstances, Nexon's assertion that Ironmace has not produced
23 any Dark & Darker-related development documents is completely misleading.

24 **EVIDENCE SUBMISSION PROCEDURE AND RIGHTSHOLDER PROTECTION**

25 **UNDER KOREAN LAW**

1 12. The KCPA provides various court procedures to ensure the parties' right to collect
2 evidence including: Application for witnesses (Article 308 of the KCPA), appraisal (Article 333
3 of the KCPA), verification (Article 364 of the KCPA), interrogatories (Article 367 of the
4 KCPA), request for documents (Article 352 of the KCPA), preservation of evidence (Article 375
5 of the KCPA), application for an order to produce documents (Article 345 of the KCPA), order
6 to produce financial transaction information, etc. I would like to explain Nexon's conduct with
7 regard to the court procedures recognized under the KCPA in the application for preliminary
8 injunction case filed in Suwon District Court and the main lawsuit filed in Seoul Central District
9 Court as follows.

10 13. Pre-suit evidence preservation: A party may apply to the court for evidence
11 preservation (Article 375 of the KCPA) even before filing a civil lawsuit to quickly secure
12 necessary evidence. Although it is possible to apply to the court for evidence preservation before
13 or during the filing of a lawsuit for evidence that must be secured on an urgent basis, Nexon has
14 not utilized the evidence preservation procedure.

15 14. Application for a document production order under the KCPA: The KCPA
16 provides for a document production order system (Article 345 of the KCPA) under which the
17 court may order a party to produce a document in its possession upon application by the other
18 party. Furthermore, if the other party fails to produce the documents despite the court's order, the
19 court may recognize the applicant's claim regarding the content of documents as true (Article
20 349 of the KCPA). Nexon has not filed an application for a document production order.

21 15. Application for appraisal under the KCPA: The appraisal procedure under the
22 KCPA allows a third-party expert to compare the parties' source code and determine whether it is
23 similar (Article 333 of the KCPA). However, during the three (3) hearings for the preliminary
24 injunction case, Nexon has never made an explicit request for examination of evidence (such as
25 an application for appraisal) regarding whether the source code of the P3 Game and the Dark and
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1 Darker Game are substantially similar, the characteristics of the source code, etc. Nexon has not
2 filed an application for an appraisal.

3 16. Application for submission of materials under the Unfair Competition Prevention
4 and Trade Secrets Protection Act (hereinafter “UCPA”): The UCPA, which applies to the
5 preliminary injunction in this case, has a provision for submission of materials (Article 14-3 of
6 the UCPA). This provision was introduced in consideration of the difficulty in calculating
7 damages for trade secret infringement cases, and states that “the court may, upon the request of
8 either party, order the other party to submit materials necessary for the assessment of damages
9 caused by the infringement.” Thus, a party to the suit may file an application for a substantial
10 range of documents necessary for the “calculation of damages.” To date, Nexon has not filed
11 such an application in the main lawsuit before the Seoul Central District Court.

12 17. Sanctions for refusal to produce documents: If the other party fails to produce
13 documents despite a court order to do so, the court may recognize the applicant’s claim regarding
14 the content of documents as true (Article 349 of the KCPA). In addition, if a party destroys a
15 document that it is obligated to produce or makes it unavailable for the purpose of preventing the
16 other party from using it, the court may recognize the other party's assertions about the contents
17 of the document as true (Article 350 of the KCPA). However, even if a requested document was
18 destroyed, if it is recognized that there is a possibility that the destroyed part of the document
19 contains content that is contrary to the residual part and thus it is impossible to be certain that the
20 purpose of the document as a whole is in accordance with the claim of the party submitting the
21 document, the resulting disadvantage shall be attributed to the party who submitted the destroyed
22 document (The Korean Supreme Court Decision 2014Da81542, rendered on November 17,
23 2015).

24 18. Request for Forwarding of Document: The KCPA has a document forwarding
25 procedure that allows a court to request an investigative agency to forward documents in the
26 agency's possession to the court (Article 352 of the KCPA). Nexon has filed criminal charges

1 against Choi and Ironmace, and the Korean law enforcement (investigative) agency has obtained
2 a large number of documents and information through two searches and seizures of Ironmace,
3 Choi, and Park. Under such circumstances, Nexon could have requested the court to order the
4 production of these documents, but it did not do so.

5 19. Investigative agency's obligation to cooperate: The KCPA stipulates that a person
6 who has been entrusted with forwarding documents from the court must cooperate unless
7 justifiable reasons exist (Article 352-2 of the KCPA). Accordingly, investigative agencies
8 actively cooperate with such requests from the court and send relevant documents to the court
9 unless there are other justifiable grounds (i.e., documents related to a juvenile case or an
10 individual's privacy).

11 20. Requesting an information provision order under the Copyright Act: The
12 Copyright Act has established provisions for the provision of information that are intended to
13 have a similar effect to the discovery procedure under Rule 26(b) of the U.S. Federal Rules of
14 Civil Procedure. That is, the Act stipulates as follows: "Where deemed necessary for collecting
15 evidence upon request of the party concerned in a lawsuit against the infringement of copyright
16 or other rights protected pursuant to this Act, the court may order the other party concerned to
17 provide the following information that he or she holds or knows" (Article 129-2(1) of the
18 Copyright Act). This Article is a special provision in relation to the document production orders
19 under the KCPA – specifying the scope of document production and establishing sanctions for
20 violation of the production order. Here, the scope of the 'information' is very broad as it refers
21 to: (1) Information capable of identifying the act of infringement or a party related to the
22 production and distribution of illegal copies; and/or (2) Information on the routes of production
23 and distribution of illegal copies (however, the other party concerned may refuse to provide
24 information regarding certain categories of information, such as trade secrets or information
25 related to the protection of privacy). Nexon could have actively utilized the provisions of Article
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1 129-2 of the Copyright Act in a case seeking a preliminary injunction against Ironmace for
2 copyright infringement, but it did not do so.

3 21. The UCPA (Article 14-2 of the UCPA) and the Copyright Act (Articles 125, 125-
4 2, and 126 of the Copyright Act) provide strong protection for rights holders by having various
5 damages estimation provisions that allow plaintiffs to estimate their damages even in cases
6 where they cannot prove actual damages. The UCPA also provides greater protection for trade
7 secret holders by allowing courts to increase damages up to three (3) times the actual damages
8 for willful infringement of trade secrets (Article 14-2(6) of the UCPA).

9 **THE NECESSITY FOR THIS CASE TO BE HEARD IN THE KOREAN COURT**

10 22. In the ongoing preliminary injunction proceedings in South Korea, Nexon
11 submitted the declarations of Kyung Han Jang, In Gu Kim, Woo Sik Jung, Jung Hyun Choi, and
12 Hyun Sung Kim, and Ironmace submitted the declarations of Sung Wook Hyun, Tae Woong
13 Lee, Yu Sung Noh, Woo Min Yang, Jae Hee Kim, and Jin Ho Lee, all of which were written in
14 Korean. If the case proceeds to trial, both parties will likely produce a lot of evidence from
15 witnesses, all of whom are South Koreans living in Korea. Litigating the suit in the U.S. while all
16 of the witnesses are located in Korea would significantly delay the court procedures.
17 Furthermore, most of the physical evidence that the parties may produce is located in Korea,
18 which makes it easier for the Korean courts to examine the evidence.

19 23. Nexon did not fully utilize the evidence examination procedure guaranteed by
20 Korean law in the main lawsuit filed on August 20, 2021 (Seoul Central District Court
21 2021GaHap560970), as well as in the preliminary injunction case filed in Suwon District Court
22 (Suwon District Court 2023GaHap 10129). This demonstrates that there was no necessity for
23 Nexon to utilize the U.S. discovery procedure in this case.

24 24. Nexon argued that the activities of Ironmace, Choi, and Park for the development
25 of Dark and Darker game were sufficiently recognized as trade secret infringement, copyright
26 infringement, and unfair competition only with the evidence and documents submitted in the

1 application for the preliminary injunction, and requested the preliminary injunction case to be
2 closed without filing any request for evidence, which is guaranteed by Korean law.

3 25. This dispute occurred in Korea, and it is appropriate for this dispute to proceed in
4 Korean court given that human witnesses and physical evidence exist in Korea and an
5 investigation is being conducted through criminal procedures

6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct to the best of my knowledge.

8 EXECUTED at Seoul, Korea, this 14 day of July, 2023

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Eung Jun Jeon
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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the United States of America that on this date, the foregoing document was filed electronically with the Court and thus served simultaneously upon all counsel of record.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on July 14, 2023.



Kristine Nicolas